

MINUTES

MONTANA SENATE 59th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN MIKE WHEAT**, on January 26, 2005 at 9:00 A.M., in Room 303 Capitol.

ROLL CALL

Members Present:

Sen. Mike Wheat, Chairman (D)
Sen. Brent R. Cromley (D)
Sen. Jon Ellingson (D)
Sen. Jesse Laslovich (D)
Sen. Jeff Mangan (D)
Sen. Lynda Moss (D)
Sen. Jerry O'Neil (R)
Sen. Gerald Pease (D)
Sen. Gary L. Perry (R)
Sen. Jim Shockley (R)

Members Excused: Sen. Aubyn Curtiss (R)
Sen. Dan McGee (R)

Members Absent: None.

Staff Present: Valencia Lane, Legislative Branch
Mari Prewett, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: SB 251 and SB 252, 1/20/2005
Executive Action: None.

HEARING ON SB 251**Opening Statement by Sponsor:**

SEN. JERRY O'NEIL, SD 3, COLUMBIA FALLS, opened the hearing on **SB 251**, Authorize appeal of denial of jury trial. **SEN. O'NEIL** provided the Committee with a copy of Heidema, v. First Bank of Billings, (Exhibit 1), and Woirhaye v. Montana Fourth Judicial District Court, (Exhibit 2). **SEN. O'NEIL** referred to Heidema v. First Bank of Billings and read a portion of the decision to the Committee. He explained his perception of the problems with present procedures and asked the Committee to pass SB 251.

EXHIBIT(jus20a01)

EXHIBIT(jus20a02)

Proponents' Testimony: None.

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses:

SEN. CROMLEY asked **SEN. O'NEIL** if he was aware of any other statutes, other than those indicated in Heidema v. First Bank of Billings that would also implement the ability to appeal. **SEN. O'NEIL** responded that he was not aware of any statute that states that a person has the right to appeal a jury trial.

SEN. CROMLEY asked **SEN. O'NEIL** if there were any statutes at present that would allow for an appeal for a jury trial. **SEN. O'NEIL** replied that he did not know if it was by statute or by case law. He went on to say that the Supreme Court had ruled that if the Court were to deny venue then the person would have the right to appeal the venue issue prior to the trial. He further indicated that he did not know if this was by statute or not.

Closing by Sponsor:

SEN. O'NEIL stated that it was a good bill and asked the Committee to vote for it.

{Tape: 1; Side: A; Approx. Time Counter: 0 - 8.2}

HEARING ON SB 252**Opening Statement by Sponsor:**

SEN. JERRY O'NEIL (R), COLUMBIA FALLS, SD 3, opened the hearing on **SB 252**, Authorize consideration of marital misconduct in property settlements. **SEN. O'NEIL** explained that SB 252 would do away with the words, "without regard to marital misconduct", in present statute. He went on to say that by removing this language it would allow the Courts to consider marital misconduct when dividing property in a divorce. **SEN. O'NEIL** presented a couple of different examples to illustrate to the Committee the need for this change to present statute. He concluded by asking the Committee to pass SB 252.

Proponents' Testimony:

Rachel Roberts representing the Montana Family Foundation, spoke in support of SB 252. **Ms. Roberts'** written testimony is attached as Exhibit 3.

EXHIBIT(jus20a03)

Becky Stockton, Helena, representing herself, stated that she fully supported SB 252. **Ms. Stockton** provided the Committee with an example of why she felt SB 252 was a good bill.

Eric Schiedermayer representing the Montana Catholic Conference, stated that the Catholic Church believes strongly in the institution of marriage. He went on to say that they believe that no fault divorce dealt a tremendous blow in many ways to the institution of marriage in this country. He continued by saying that they believe that marriage provides the foundation for much of the strength of this country. **Mr. Schiedermayer** expressed hope that the Committee would pass SB 252.

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses:

SEN. ELLINGSON asked **SEN. O'NEIL** how a Judge was supposed to apply marital misconduct to a case without a definition. **SEN. O'NEIL** responded that he did not believe that a Judge could properly apply marital misconduct. He went on to say that one of the reasons he felt they needed to pass SB 252 was because there was no definition for marital misconduct.

CHAIRMAN WHEAT asked **SEN. O'NEIL** if he felt that child support being calculated on whether or not a spouse had cheated was violating the concept of what would be in the best interest of the child. **SEN. O'NEIL** replied that at present they could base child support on marital misconduct. He went on to say that this bill would not stop the Judge from being able to consider what job the person performs, it would simply allow the person to argue that he should not have to change employment to pay higher child support at the time of dissolution pursuant to what was considered to be his employment capabilities.

SEN. CROMLEY referred **SEN. O'NEIL** to language presently in statute and asked him if that language did not already take care of the problem of a person professing not to be securely employed. **SEN. O'NEIL** asked **SEN. CROMLEY** if the language was under child support or property division. **SEN. CROMLEY** replied that it was under the same statute as being amended in SB 252. **SEN. O'NEIL** responded that the Court could consider these things but it cannot consider whether or not the person's child support should be computed on their present salary or on a different salary. He went on to say that presently the individual would not be allowed to argue that they should not be forced to change employment in order to pay a higher level of child support because of marital misconduct on the part of their spouse.

Closing by Sponsor:

SEN. O'NEIL stated that what the SB 252 was saying, was in all contracts the Court should be able to consider fault. He went on to say that in all other contracts fault could be considered, however, it could not be considered in a marriage contract. He further stated that he did not believe it was the intent of the statute in the first place, therefore, SB 252 would simply clear it up.

{Tape: 1; Side: A; Approx. Time Counter: 8.2 - 25.5}

CHAIRMAN WHEAT reminded the Committee that they were going to start meeting at 8:00 a.m.

{Tape: 1; Side: A; Approx. Time Counter: 25.5 - 26.9}

ADJOURNMENT

Adjournment: 9:30 A.M.

SEN. MIKE WHEAT, Chairman

MARI PREWETT, Secretary

MW/mp

Additional Exhibits:

EXHIBIT ([jus20aad0.PDF](#))